

AGREEMENT NUMBER
01-16385

This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Health Services

CONTRACTOR'S NAME

Health Services Advisory Group, Inc.

2. The term of this Agreement is: January 1, 2002 through December 31, 2002
3. The maximum amount of this Agreement is: \$1,082,600.
One million, eighty-two thousand, and six hundred dollars
4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.
- | | |
|---|----------------------|
| Exhibit A – Scope of Work | 10 pages |
| Exhibit B – Payment Provisions | 3 pages |
| Exhibit C * – General Terms and Conditions | GTC201 dated 2/01/01 |
| Exhibit D(F) – Special Terms and Conditions (Attached hereto as part of this agreement) | 26 pages |
| Exhibit E – Additional Provisions | 19 pages |
| Exhibit F – Contractor's Release | 1 page |
| Exhibit G – Resumes | 8 pages |

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <http://www.dgs.ca.gov/contracts>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Health Services Advisory Group, Inc.

BY (Authorized Signature)

Mary Ellen Dalton

DATE SIGNED (Do not type)

4-1-02

PRINTED NAME AND TITLE OF PERSON SIGNING

Mary Ellen Dalton, Vice President, State and Corporate Services

ADDRESS

301 East Bethany Home Road, Ste. B-157 Phoenix, AZ 85102

STATE OF CALIFORNIA

AGENCY NAME

California Department of Health Services

BY (Authorized Signature)

Nadine Fujita Roh

DATE SIGNED (Do not type)

04/11/02

PRINTED NAME AND TITLE OF PERSON SIGNING

Edward Stahlberg, Chief, Program Support Branch

Nadine Fujita Roh, Chief
CMU Production

ADDRESS

1800 3rd. Street, Rm. 455, P.O. Box 942732, Sacramento, CA 94234-7320

California Department of General
Services Use Only

CAIR

APPROVED

MAY 11 2002

DEPT OF GENERAL SERVICES

Ray Hen

☐ Exempt per:

EXHIBIT A
Scope of Work
01/01/02 – 12/31/02

1. Contractor agrees to provide to the Department of Health Services (DHS) the services described herein: External quality review services for Medi-Cal managed care plans under contract to DHS.
2. The services shall be performed at the applicable contracted managed care plans or the contractor's office, as appropriate for the assignment.
3. The services shall be provided during the normal working hours of the Contractor.
4. The project representatives during the term of this agreement will be:

Department of Health Services:

Laura Blank, Branch Chief
Medi-Cal Managed Care Division
(916) 657-2992
Fax: (916) 654-0288

Contractor:

Mary Ellen Dalton, Vice President
Health Services Advisory Group, Inc.
(602) 264-6382
Fax: (602) 241-0757

Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

Direct all inquiries to:

Department of Health Services
Office of Clinical Standards
and Quality
Attention: Laura Blank
Sacramento, CA 95814
(916) 657-2992
Fax: (916) 654-0288

Health Services Advisory Group, Inc.
Mary Ellen Dalton, Vice President
301 E. Bethany Road, Ste. B157
Phoenix, AZ 85012
(602) 264-6382
Fax: (602) 241-0757

5. See the attached pages for a detailed description of the work to be performed.

SERVICE DELIVERY REQUIREMENTS

1. External Accountability Set Compliance Audits and Reports

A. Audit of External Accountability Set Performance Measures

The Contractor shall conduct External Accountability Set Compliance Audits of six (6) Health Plan Employer Data and Information Set (HEDIS®) measures and two (2) Department-developed performance measures for 19 contracted MCPs, as specified in Exhibit A, page 10.

1. For all plan types, the Contractor shall conduct audits of the following measures:

a. HEDIS Measures

1. Child Immunization Status
2. Well-Child Visits in the First 15 Months of Life
3. Prenatal and Postpartum Care
4. Adolescent Well-Care Visits
5. Appropriate Use of Pharmaceuticals for Asthma Patients

For all Two-Plan Model and Geographic Managed Care (GMC) MCPs, the Compliance Audit shall include the following HEDIS measure:

- 6a. Well-Child Visits in the Third, Fourth, Fifth and Sixth Year.

For each County Operated Health Systems (COHS) MCPs, the Compliance Audit shall include the following HEDIS measure:

- 6b. Retinal Exams for Diabetics.

b. Department-Developed Measures

1. Blood Lead Screening
2. Asthma Management/Pharmaceutical Utilization

2. The Contractor shall conduct the audits in accordance with a standardized methodology as approved by the National Committee on Quality Assurance (NCQA). Additionally, the Contractor is expected to:
 - a. Include primary source verification of the data as part of the audit process;
 - b. Monitor that errors identified in the audit process are mitigated and that corrective action is taken by the MCP to avoid future errors.

B. External Accountability Set Performance Measure Reports

1. Plan-Specific Reports:

a. Preliminary Report of the External Accountability Set Compliance Audit Results

The Contractor shall produce a Preliminary Audit Report for each of the 19 audited MCPs detailing the results of the compliance audit for the External Accountability Set. This report is to include the results of the audit as pertains to the HEDIS and Department-developed performance measures. As the scope of reporting includes information about Department-developed measures, and therefore differs from that for NCQA pursuant to their reporting specifications, it is the Contractor's responsibility to meet all NCQA reporting requirements separate and apart from those reporting requirements contained herein. The Contractor shall deliver one master copy and one electronic version of each MCP-specific report to the Department's Contracting Officer no later than two (2) weeks after completion of the on-site audit.

b. Final Report of the External Accountability Set Compliance Audit Results

The Contractor shall produce a Final Audit Report for each of the 19 audited MCPs that identifies the findings of the audit, all corrective actions recommended or taken to eliminate errors found during the audit, and the resulting rates for each of the eight (8) performance measures. As the scope of reporting for the Department includes information about Department-developed measures, and therefore differs from that for NCQA pursuant to their reporting specifications, it is the Contractor's responsibility to meet all NCQA reporting requirements separate and apart from the reporting requirements

contained herein. The Contractor shall deliver one master copy and one electronic version of each MCP-specific report to the Department's Contracting Officer by June 15, 2002.

2. Aggregate Reports:

Upon completion of all performance measure audits, and after receipt of the final reported compliance rates for all 22 contracted MCPs, the Contractor will develop two separate summary reports that identify significant trends and systemic issues among the contracted Medi-Cal managed care plans for (1) HEDIS performance measures and (2) Department-developed performance measures.¹ The reports are to provide comprehensive analyses of the performance of the Medi-Cal managed care system in delivering care, as measured by specific clinical indicators.

- a. The reports are to include detailed findings, analysis and recommendations to the MCPs concerning:
 - 1) Information system capabilities;
 - 2) Reporting methods;
 - 3) Medical record abstraction tools and processes;
 - 4) Calculation of rates of the performance measures;
 - 5) Areas requiring improvement.
- b. With respect to the performance measure rates, the reports must address, at a minimum:
 - 1) A comparison of each MCPs' rates for each reported measure with each of the other 21 MCPs;
 - 2) A comparison of each MCPs' rates for each reported measure with the average rate for that measure for each plan model type;
 - 3) A comparison of each MCPs' rate for each reported measure with the average rate for that measure for each ethnic population to be subsequently defined by the Department;

¹ If the three MCPs which have contracted with an independent firm for performance of the External Accountability Set Compliance Audit fail to communicate the results of the audit to the Contractor within 45 days of when the Contractor's aggregate reports are due to the Department, the Contractor may request an extension of the due date. The final due date must be approved by the Department.

- 4) A comparison of each MCPs' rates with the Medi-Cal Managed Care average (i.e. the average of the 22 contracted plans) for each measure;
- 5) A comparison of each MCPs' rates to appropriate benchmarks including, but not limited to the national Medicaid average and Healthy Families program rates for each measure, as available;
- 6) Identification of potential areas for targeted improvement efforts;
- 7) Performance trends for each measure across all previous reporting years by each MCP, as applicable;
- 8) Specific recommendations to the Department for overall improvement in External Accountability Set performance rates.

The draft aggregate reports are due to the Department's Contracting Officer by August 1, 2002. The final aggregate reports must be delivered to the Department's Contracting Officer by September 15, 2002. In the event that a final aggregate report does not meet the Department's satisfaction, the Department will exercise one of two options: (1) the Department will find the Contractor in default of its obligation to provide an acceptable final aggregate report and no payment shall be made to the Contractor for that report; or (2) the Contractor will be notified and will receive ten (10) working days to rectify the identified deficiencies and submit a revised report. If the Contractor does not meet the Department's requirements for reporting at that time, the Department will exercise option one.

For each draft report, the Contractor is required to submit ten (10) copies, plus an electronic version on diskette. For each final report, the Contractor must send five (5) hard-copies, one (1) electronic copy, and one camera-ready version to be used for mass production.

As a standard, the Department will submit comments regarding draft reports to the Contractor within 10 working days from receipt of the draft. Should the Department be unable to meet this timeframe, a new deadline for the final report may be negotiated at the Department's discretion. The Contractor is expected to notify the Department's Contracting Officer if comments regarding the draft report(s) are not received within the 10-day timeframe.

2. Evaluation of Internal Quality Improvement Projects (IQIPs)

A. Monitoring and Technical Assistance

The Contractor shall review and evaluate each proposed IQIP submitted by each MCP. The Contractor shall provide an assessment and recommendation as to the appropriateness of the project topic and study methodology, including the adequacy of performance measures/indicators chosen to determine baseline rates or for problem analysis.

At the completion of each phase of IQIP activity, each MCP will submit a report summarizing the results of phase activities. The Contractor will deliver a written evaluation of each IQIP, prior to start-up of the next phase of operations, to the MCP and the Department within 30 days of receipt of the MCP's report. The evaluation should address the completeness of the reporting process and adequacy of the conduct of the study.

The Contractor shall review the processes used by the MCPs to measure and re-measure for significant and sustained improvement. If an MCP does not achieve significant and/or sustained improvement, the Contractor shall evaluate the MCP's analysis as to the causes for failure to achieve the desired improvement and develop recommendations for a remedial plan to improve results prior to remeasurement.

The Contractor shall maintain sufficient oversight of the IQIP process to be able to identify potential problems and recommend corrective actions to the MCP in any phase of an IQIP. The Contractor shall also keep the Department apprised of any significant concerns regarding the status of any individual IQIP. The Contractor shall issue quarterly status reports to the Department on April 30, June 30, and September 30, 2002 which track the status of all MCP IQIPs.

B. IQIP Overview Report

The Contractor shall prepare an overview report of IQIPs from IQIP initiation through June 30, 2002. The report shall include, at a minimum:

1. Discussion of significant findings and trends with respect to the types, progression, and outcomes of IQIPs;

2. Recommendations for improvements to the IQIP process including selection of topics and project methodologies;
3. Detailed analysis of successful studies and identification of best practices.

The report is to be delivered to the Department no later than October 15, 2002. The Contractor is to supply ten (10) copies, plus one electronic version of the report.

3. EQRO Overview Report

The Contractor shall prepare an overview report of the significant findings of the EQRO Quality Review Program from contract inception through June 30, 2002. The report shall provide an analysis of each MCP's performance across quality measures (i.e. HEDIS; consumer satisfaction surveys; Department-developed performance measures; IQIPs) over the length of the EQRO contract. The report shall include, at a minimum:

- A. Performance trends among Medi-Cal managed care plans;
- B. Performance trends across plan models;
- C. Performance trends of MCPs relative to national Medicaid performance trends;
- D. Recommendations for future EQRO activities.

The report is to be delivered to the Department no later than October 15, 2002. The Contractor is to supply ten (10) copies, plus one electronic version of the report.

4. Annual Quality Improvement Conference

The Contractor shall conduct a one-day, annual quality improvement conference for MCPs, Department staff, the Center for Medicare and Medicaid Services, and other invited organizations and individuals. The conference must be planned and organized to present up-to-date, practical information regarding Quality Improvement issues and best practices as they affect the managed care environment. The Contractor must submit a draft agenda by April 30, 2002 or such later date as may be specified by the Department. The conference is to be conducted during September 2002.

In planning the conference, the contractor must arrange for:

- A. Keynote speakers;
- B. Attendance/participation of nationally recognized speakers;
- C. A luncheon, as well as morning and afternoon snacks;

- D. Honorariums and travel costs;
- E. Availability of continuing education units.

5. Attendance at Specified Meetings

- A. Quality Improvement Workgroup:** The Contractor will participate in all regularly scheduled meetings of MMCD's Quality Improvement workgroup. The Quality Improvement workgroup, consisting of representatives from the EQRO, MCP Quality Improvement or Medical Director staff, and the Department, meets for a full day, approximately ten (10) times per year. The Contractor shall present materials, conduct appropriate research on selected issues, propose strategies and methodologies for problem resolution or system improvement and otherwise facilitate the work of this workgroup. The Contractor shall be required to be physically present at five (5) of the meetings which will be determined by the Department. The remaining meetings may be attended via telephonic conferencing.
- B. Medical Directors' Meetings:** The Contractor shall participate in regularly scheduled Medical Directors' meetings. This group meets for a full day, approximately eight (8) times per year. The Contractor shall be required to be physically present at two (2) of the meetings which shall be determined by the Department. The remaining meetings may be attended via telephonic conferencing as requested by the Department.
- C. Encounter Data Workgroup:** The Contractor shall participate in regularly scheduled meetings of the Encounter Data workgroup, as required by the Department. The Encounter Data workgroup meets approximately seven (7) times per year for a full-day meeting. The Contractor is not be expected to attend in person, but shall participate via telephonic conferencing.
- D. Regularly Scheduled Conference Calls:** The Contractor shall ensure attendance by appropriate staff at a regularly scheduled telephone conference call to discuss issues related to the external quality review program. During the meetings, the Contractor will be expected to report the following:

 - 1. EQRO activities undertaken during the period in review;
 - 2. Department meetings attended, including the names of the attendees and hours spent in attendance;
 - 3. An explanation of any technical assistance provided to the Department or MCP including the name(s) of the Department

representatives and/or MCP(s) involved and individuals providing consultation, the number of hours dedicated, and the nature of the assistance;

4. Status of reports due to the Department;
5. Any problems or issues found during the period in review.

The conference call will not exceed two hours per meeting. The Contractor and the Department, at the inception of this contract, shall mutually determine the time and frequency of the meetings.

6. Special Consultative Services

The Contractor shall provide special consultative services to assist the Department in development of activities undertaken as part of the Department's quality improvement strategy. Such special consultative services are in addition to the activities described above in this scope of work. At the direction of the Department's Contracting Officer, the Contractor may be required to conduct appropriate research on selected issues or propose strategies and methodologies for problem resolution or system improvement. The maximum number of special consultative hours required of the Contractor shall not exceed 665 hours during the period January 1, 2002 and September 30, 2002.

CONTRACTING MANAGED CARE PLANS

1. Alameda Alliance for Health
2. Blue Cross of California*
3. CalOPTIMA
4. Community Health Group
5. Central Coast Alliance for Health
6. Contra Costa Health Plan*
7. HealthNet
8. Health Plan of San Joaquin
9. Health Plan of San Mateo
10. Inland Empire Health Plan
11. Kaiser Foundation Health Plan
12. Kern Family Health Care
13. LA Care Health Plan
14. Molina Health Plan*
15. Partnership Health Plan
16. San Francisco Health Plan
17. Santa Barbara Regional Health Authority
18. Santa Clara Family Health Plan
19. Sharp Health Plan
20. UCSD Health Plan
21. Universal Health Plan
22. Western Health Advantage

* These plans have contracted with an independent firm for performance of the External Accountability Set Compliance Audit. Communication of the results of the audit, including performance measure rates for HEDIS® and Department-developed measures, is the responsibility of the individual plan. The Contractor bears no responsibility for preparing plan-specific reports for these MCPs.

EXHIBIT B
PAYMENT PROVISIONS

1. Invoicing and Payment

For services satisfactorily rendered, the State agrees to compensate the Contractor in accordance with the rates specified herein, which are attached and made a part of this Agreement.

2. Budget Contingency Clause

- a) It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- b) If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, government Code Chapter 4.5, commencing with Section 927.

4. Amounts Payable

- a) The amount payable under this Agreement shall not exceed \$1,082,600.

PAYMENT PROVISIONS

1. Amounts Payable

The maximum amount payable under this contract ending December 31, 2002 will not exceed \$1,082,600. October 1, 2002 through December 31, 2002 has been reserved for Turnover/Phaseout related activities. Payments made during this time period will only be for those deliverables completed and approved by the Department as set forth in the Scope of Work, Exhibit A. No payments shall be made for Turnover/Phaseout related activities.

2. Payment Detail

.1 Pursuant to the terms of Exhibit A, Section 1: External Accountability Set Compliance Audits and Reports, the Contractor shall perform External Accountability Set Compliance Audits at 19 contracted managed care plans. Subsequent to completion of the audits, the Contractor must produce 19 plan-specific preliminary reports and 19 plan-specific final reports. The Contractor shall also produce two aggregate reports in completion of the External Accountability Set Audits and Reports deliverable. The Contractor will be paid \$180,200 upon delivery and Department approval of all 19 plan-specific preliminary reports. The Contractor will be paid \$180,200 upon delivery and Department approval of all 19 plan-specific final reports. The Contractor will be paid \$108,120 upon delivery and Department approval of the HEDIS performance measure aggregate report. The Contractor will be paid \$72,080 upon delivery and Department approval of the Department-developed performance measure aggregate report. In total, the maximum amount payable for all reports that constitute the External Accountability Set Reports is \$540,600.

If the Department cannot approve a final aggregate report due to the Contractor's failure to correct deficiencies as noted by the Department, the Department may exercise one of two options:

- (1) The Department shall find the Contractor in default of its obligation to provide a final aggregate report and no payment shall be made to the Contractor for this report; or
- (2) The Department may provide additional comments regarding the deficiencies in the report and allow the Contractor 10 working days to

correct these deficiencies and provide an acceptable final aggregate report.

In the event that the Contractor does not provide an acceptable final aggregate report after ten (10) working days, the Department will exercise the first option and find the Contractor in default of its contractual obligation.

.2 Pursuant to the terms of Exhibit A, Section 2.1: Evaluation of Internal Quality Improvement Projects, the Contractor shall monitor each of 22 plans' internal quality improvement projects. The Contractor shall produce quarterly reports identifying the status of each IQIP, including phase-end evaluations, potential problems or concerns, and recommended remedial plans as presented to the MCPs. Upon submission and Department approval of quarterly reports on April 30, June 30, and September 30, the Contractor will be paid \$100,000 for each report. The maximum amount payable for IQIP Monitoring is \$300,000.

.3 Pursuant to the terms of Exhibit A, Section 2.2: IQIP Overview Report and Section 3: EQRO Overview Report, the Contractor shall produce an IQIP Overview Report and an EQRO Overview Report. The maximum amount payable for the overview reports is \$115,500. The Contractor will be paid a maximum of \$57,750 upon delivery and Department approval of each report.

.4 Pursuant to the terms of Exhibit A, Section 4: Annual Quality Improvement Conference, the Contractor shall coordinate and facilitate an Annual Quality Improvement Conference. Upon completion of the conference and subject to the Department's approval of the Contractor's performance in coordination and facilitation of the conference, the Contractor will be paid \$60,000.

.5 Pursuant to the terms of Exhibit A, Section 6: Special Consultative Services, the Contractor shall provide additional consultative services, at the Department's request, to assist in the development of quality improvement activities exclusive of those mentioned above. During the period January 1, 2002 through September 30, 2002, the Contractor must submit billing statements that specify the number of hours spent in consultation, name(s) of the Department representatives to whom consultation was provided, and the nature of the consultation. Upon Department approval of each quarterly statement, the Contractor will be paid \$100.00 per hour beginning March 31. The maximum amount payable for all Special Consultative Services during the period January 1, 2002 through September 30, 2002 is \$66,500.

3. Ten Percent (10%) Withhold

All payments are subject to a 10% withhold. The withhold will be released at the end of the contract term after the Department has determined that all Contractor obligations have been fulfilled to the satisfaction of the Department.

Special Terms and Conditions*(For federally funded service contracts and grant awards)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean "grant", "Grantee" and "Subgrantee" respectively.

Index of Special Terms and Conditions

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements.)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHS may direct as a means of enforcing such

provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHS, the Contractor may request in writing to DHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from DHS under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by DHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior written authorization from DHS.

3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by DHS or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more that is listed on the DHS Asset Management Unit's Minor Equipment List and is either furnished by DHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the DHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by DHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate DHS program contract manager, to have all remaining

equipment purchased through DHS' Purchasing Unit. The cost of equipment purchased by or through DHS shall be deducted from the funds available in this agreement. Contractor shall submit to the DHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with DHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the DHS program contract manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHS, prior written authorization from the appropriate DHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHS (e.g., when DHS has a need to monitor certain purchases, etc.), DHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHS determines to be unnecessary in carrying out performance under this agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

- h. DHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by DHS and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

All equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement and not fully consumed in performance of this agreement shall be considered state equipment and the property of DHS.

- (1) DHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by DHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the DHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHS Funds) does not accompany this agreement, Contractor shall request a copy from the DHS program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the DHS program contract manager using a form or format designated by DHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the DHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
 - (b) Submit the inventory report to DHS according to the instructions appearing on the inventory form or issued by the DHS program contract manager.
 - (c) Contact the DHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by DHS' Asset Management Unit.
- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property not owned by the State.
 - c. Unless otherwise stipulated, DHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
 - d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
- (1) In administering this provision, DHS may require the Contractor and/or Subcontractor to repair or replace, to DHS' satisfaction, any damaged, lost or stolen state equipment and/or

miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHS program contract manager.

- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, shall only be used for performance of this agreement or another DHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the DHS program contract manager and shall, at that time, query DHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to DHS. Final disposition of equipment and/or miscellaneous property shall be at DHS expense and according to DHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by DHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, DHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different DHS agreement.

g. Motor Vehicles

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to DHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, to the Contractor and/or Subcontractor.

- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHS program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to DHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - [3] The insurance carrier shall notify the State of California Department of Health Services, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
 - (1) The Contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) The State may identify the information needed to fulfill this requirement.

- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
- (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233, subsection 3. View this publication at the following Internet address: <http://www.sam.dgs.ca.gov>.
- (4) Unless otherwise mandated by the funding agency (i.e., federal government), DHS may only pay the Contractor's overhead charges or indirect costs on the first \$25,000 of each subcontract.
- b. DHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
- (1) Upon receipt of a written notice from DHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHS. DHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by DHS, make said copies available for approval, inspection, or audit.
- e. Sole responsibility rests with the Contractor to ensure that subcontractors, used in performance of this agreement, are paid in a timely manner. The timeliness of said payments may be affected by the timeliness of payments issued by DHS to the Contractor.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHS, to permit DHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by DHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to DHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHS under this agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
 - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.
- d. DHS has the option to void or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where DHS has agreed in a signed writing to accept a license, DHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of DHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of DHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHS. **Except as otherwise set forth herein, neither the Contractor nor DHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with DHS in establishing or maintaining DHS' exclusive rights in the Intellectual Property, and in assuring DHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with DHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to DHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such

person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement.

- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement, shall include DHS' notice of copyright, which shall read in 3mm or larger typeface: "© 2001, State of California, Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to DHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to DHS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHS' prior written approval; and (ii) granting to or obtaining for DHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon these terms is unattainable, and DHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to DHS.

f. Warranties

- (1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
- (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHS in this agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (2) DHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless DHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. DHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHS.
- (2) Should any Intellectual Property licensed by the Contractor to DHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to DHS. DHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate DHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHS would suffer irreparable harm in the event of such breach and agrees DHS shall be entitled to

obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.

- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than DHS without prior written authorization from the DHS program contract manager.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever the Contractor believes there is a dispute arising from DHS' action in the administration of an agreement. If the Contractor believes there is a dispute or grievance between the Contractor and DHS, both parties shall follow the procedure outlined below.
 - (1) The Contractor should first discuss the problem informally with the DHS program contract manager. If the problem cannot be resolved at this stage, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) The Contractor must prepare a letter indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the letter a copy of the Contractor's original statement of dispute with any supporting documents and a copy of the Branch Chief's response. This letter shall be sent to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division funding this agreement or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division funding this agreement or his/her designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division funding this agreement or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated by DHS, dispute, grievance and/or appeal correspondence shall be directed to the DHS program contract manager.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. or
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. or
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$300,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- d. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year. Two copies of the audit report shall be delivered to the DHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHS program contract manager shall forward the audit report to DHS' Audits and Investigations Unit.
- e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The DHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

- h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, DHS shall act upon the proposal within 60 days after receipt of the written proposal. DHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHS will initiate an amendment to this agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

- (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHS program funding this contract.
 - d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
 - e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHS may terminate this agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHS shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, DHS may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until DHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

DHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHS. Negative performance evaluations may be considered by DHS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

25. Year 2000 Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHS or if IT equipment is procured.)

The Contractor warrants and represents that the goods or services sold, leased, or licensed to the State of California, its agencies, or its political subdivisions, pursuant to this agreement are "Year 2000 Compliant." For the purposes of this agreement, a good or services is Year 2000 compliant if it will continue to fully function before, at, and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate, and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the Contractor.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. University of California Mutual Indemnification

(Applicable only to agreements entered with the Regents of the University of California or a University of California campus under its jurisdiction.)

- a. The State and the Regents of the University of California shall mutually defend, indemnify and hold each other and their respective agencies, officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of either the State or the Regents of the University of California.
- b. It should be expressly understood that the obligations hereunder shall be conditioned upon this contract being one that falls within the purview of Section 895 of the Government Code.

28. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

29. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

30. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in 2 above, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

31. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.

(b) Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

32. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHS program contract manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Health Services Advisory Group, Inc.
Name of Contractor

Mary Ellen Dalton, RN, MBA
Printed Name of Person Signing for Contractor

01-16385
Contract / Grant Number

Mary Ellen Dalton
Signature of Person Signing for Contractor

3/27/02
Date

Vice President, State & Corporate Services
Title

After execution by or on behalf of Contractor, please return to:

Department of Health Services
(Name of the DHS program providing the funds)
P.O. Box 942732
714 P Street
Sacramento, CA 94234-7320

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB

0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, If known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known: _____
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CDFA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: _____	
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI): _____ (attach Continuation Sheet(s) SF-LLL-A, If necessary)	b. Name and Address of Lobbying Entity (If individual, last name, first name, MI): _____ (attach Continuation Sheet(s) SF-LLL-A, If necessary)	
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: Nature _____ Value _____		
14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11: (Attach Continuation Sheet(s) SF-LLL-A, If necessary)		
15. Continuation Sheet(s) SF-LLL-A Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$19,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		_____
Federal Use Only		Authorized for Local Reproduction Standard Form-LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDFA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
10. (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

EXHIBIT E
ADDITIONAL PROVISIONS

1. Insurance

- .1 As used in this section, a third party carrier means an insurance and/or bonding company licensed to provide the required lines of insurance in the State of California and in the amounts required by this Contract. No policy of insurance provided or maintained under this section shall provide for an exclusion for the acts of officers, directors, or managing shareholders.
- .2 The Contractor shall furnish to the State a Certificate of Insurance stating that there is Comprehensive General Liability Insurance [CGL] presently in effect for the Contractor with a Combined Single Limit [CSL] of not less than one million dollars [\$1,000,000.] per occurrence for bodily injury and property liability combined.
 - a) The Certificate of Insurance shall provide:
 - (1) that the insurer will not cancel the insured's coverage without thirty [30] days written notice to DHS;
 - (2) that DHS, its officers, agents, employees, and servants are included as additional insureds but only insofar as the operations under this contract are concerned; and
 - (3) that DHS will not be responsible for any premiums or assessments on the policy.
 - b) The Certificate of Insurance shall meet such additional standards as may be determined by DHS, either independently or in consultation with the DGS, Office of Insurance and Risk Management [OIRM], as essential for protection of DHS.
 - c) The insurance will be issued by an Insurance Company acceptable to the DGS, OIRM or be provided through partial or total self-insurance acceptable to the DGS.
 - d) The Contractor agrees that the CGL insurance herein provided for shall be in effect at all times during the term of this Contract. The Contractor shall agree to provide at least thirty [30] days notice prior to said expiration date, a new certificate of insurance

evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Contract, or for a period of not less than one year.

- .2 The Contractor shall provide and maintain Workers' Compensation Insurance, in accordance with the statutory requirements of the state where work is performed, during the performance of this Contract, and require its subcontractors to do the same.
- .3 New Certificates of Insurance are subject to the approval of the DHS and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein required, DHS may, in addition to any other remedies it may have, terminate this contract.

2. Guaranty Provisions

- .1 If the Contractor is a subsidiary of a corporation or other legal entity, the full and prompt performance of all covenants, terms, conditions and agreements under this Contract shall be guaranteed by that entity in the Contractor's chain of ownership which is publicly traded. This entity shall be known as the Contractor's parent corporation for purposes of this Contract.
- .2 The performance guaranty shall, at a minimum, meet the following requirements. It will:
 - a) Be made to DHS.
 - b) Be signed by an official authorized to bind the guarantor organization.
 - c) Accept unconditional responsibility for all performance and financial requirements and obligations of the Contract.
 - d) Recite that "for good and valuable consideration, receipt of which is hereby acknowledged", the guarantor is making the guaranty.
 - e) State that the guarantor stipulates that this Contract is entered into by the subsidiary and DHS, and that DHS does so in reliance upon the guaranty.

- f) State that the undersigned corporate officer warrants:
 - (1) That he/she has personally reviewed all pertinent corporate documents, including but not limited to articles of incorporation, bylaws and agreements between the parent and subsidiary, and
 - (2) That nothing in these documents in any way limits the capacity of the parent to enter into the instant Contract of guaranty;
- g) Include the following provisions:
 - (1) DHS need not take any action against the Contractor, any other guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against the guarantor.
 - (2) The guarantor hereby waives any and all notices and demands which may be required to be given by any other statute or rule of law and agrees that its liability hereunder shall be in no way affected, diminished, or released by any extension of time, forbearance, or waiver which may be granted to Contractor, its successor or assignee, and that this guaranty shall extend to and include all future amendments, modifications, and extensions of the Contract and all future supplemental and other agreements with respect to matters covered by the Contract which DHS and Contractor may enter into; with or without notice to or knowledge of the guarantor, but the guarantor shall have the benefit of any such extension, forbearance, waiver, amendment, modification, or supplemental or other agreement; it being the purpose and intent of the parties hereto that the obligations of the guarantor hereunder shall be coextensive with, but not in excess of, the obligations of Contractor, its successor or assignee, under the Contract.
- h) Be presented in terms which DHS, in its discretion, determines shall, as a whole, adequately establish the Contractor's financial responsibility.
- i) Include the following provision: Guarantor agrees that the guaranty shall continue in full force and effect despite any change in the legal

or corporate status of the subsidiary including but not limited to its sale, reorganization, dissolution or bankruptcy.

3. Contractor's Obligation to Implement

DHS may issue Medi-Cal Managed Care Division [MMCD] EQRO Program Policy Letters. These documents will be utilized to notify the Contractor of clarifications made to the Contract, Contractor's scope of work, duties and obligations regarding implementation. The Contractor shall implement any and all clarifications as required by MMCD EQRO Policy Letters. The policy letters issued under this section shall not create new contract obligations.

4. Inspection Rights and Access Requirements

- .1 The Contractor shall allow DHS, the Department of Health and Human Services (DHHS), the Comptroller General of the United States, the State Auditor and other authorized federal and State agencies or their duly authorized representatives, to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract. Such activities shall include, but not be limited to interviewing employees; obtaining, reviewing, copying and auditing any and all books, records, management systems, and facilities maintained by the Contractor and subcontractors, pertaining to such services, at any time during normal business hours.
- .2 As used in this Section, books and records shall include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract including working papers; reports in development; reports submitted to DHS; financial records and books of account; study designs, tools, software, and databases; management information system files; MCP data; all medical records, medical charts and prescription files; other documentation pertaining to clinical outcomes, medical, and non-medical services rendered to MCP Members; and any related information, regardless of (1) the medium in which these books, and records are recorded or reproduced; and (2) the location where compiled and/or stored. All electronic files must be available in a format requested by DHS. [See Section 17: Turnover and Phaseout Preparation].
- .3 Upon request, at any time during the period of this Contract, the Contractor shall furnish any relevant information, record, or copy of it, to DHS, DHHS, the Comptroller General of the United States, the State Auditor and other authorized federal and State agencies, or their duly authorized representatives (hereafter "Authorized Representatives". If a

copy is provided, the Authorized Representatives shall have the right to view the original documentation upon request.

- .4 Notwithstanding any shorter period provided in Exhibit D(F), this Contract is subject to the examination and audit of the State Auditor for a period of five [5] years after final payment under this Contract.
- .5 To assure compliance with the provisions under this Contract, applicable federal and State laws, regulations and for any other reasonable purpose, Authorized Representatives shall have the right to access the Contractor's premises, with or without notice. This shall include the Contractor's and subcontractor's management facilities, presentation sites, or other places where Contract duties are being performed.
- .6 Staff designated by Authorized Representatives shall have access to all security areas and the Contractor shall provide, and shall require any and all of its subcontractors to provide, reasonable facilities to such authorized persons in the performance of their duties. Access shall be undertaken in such a manner as not to unduly delay the work of the Contractor and/or subcontractor[s].
- .7 The right of access herein shall include on-site visits by Authorized Representatives and by the successor Contractor when accompanied by a DHS representative[s]. Any security device or system which the Contractor implements to identify and monitor persons seeking access to secured areas shall be supplied by the Contractor to the Authorized Representatives.

5. Record Keeping, Audit/inspection of Records

The Contractor shall maintain books and records as defined in Section 4 above, compiled and/or stored at the Contractor's headquarters in Arizona necessary to disclose how the Contractor discharged its obligations under this Contract. These books and records, shall disclose the quantity of services provided under this Contract, the quality of those services, the manner and amount of payment made to any vendors and subcontractors for those services, MCP members' and eligible beneficiaries' medical record information/applicable MCP data , the manner in which the Contractor administered its daily business, and the cost thereof.

6. Separation of Books and Records

The Contractor shall keep all books and records or other similar materials pertaining to this Contract, as defined in Section 4, separate from other activities not related to this Contract. Contractor related records shall be maintained in the Contractor's corporate headquarters in Arizona.

7. Publications

Notwithstanding Exhibit D(F), books and records as defined in Section 4 shall not be published, disseminated or otherwise released in any manner without the express written consent of DHS. This restriction shall also apply to the publication of any activities relevant to the obligations or scope of work under this Contract, and to articles and papers proposed for publication in any newspapers, bulletins or journals.

8. Copyrights

Notwithstanding Exhibit D(F), products and materials as defined in Section 4 shall not be securable for copyrights by the Contractor or subcontractors. As specified in Section 4: Inspection Rights and Access Requirements, any products or materials produced as part of this Contract are the property of the State, and such copyrights and the right to copyright products and materials shall belong to the State and no further action shall be necessary to perfect the State's rights in them.

9. Management Information Systems [MIS]

The Contractor will maintain and ensure the MIS hardware and software are adequate to fulfill the requirements of this project for the life of this Contract. Electronic data bases and data files will be transmitted to DHS during the Turnover/Phaseout Period, in a format such as DB2 or ACSII or other format determined by DHS.

10. Contractor Certifications

- .1 With respect to any report, invoice, record, papers, documents, books of account, or other Contract required data and information submitted, pursuant to the requirements of this Contract, the Contractor's Representative or his/her representative shall certify that the report, invoice, record, papers, documents, books of account or other Contract required data and information is current, accurate, complete and in full compliance with legal and Contractual requirements to the best of that

individual's knowledge and belief, unless the requirement for such certification is expressly waived by DHS in writing.

- .2 Wherever in this Contract there is a requirement that the Contractor "certify" or submit a "certification," such certification shall be in the form of an affidavit or declaration under penalty of perjury under the laws of the State of California dated and signed by the Contractor's Representative or his/her authorized designee.

11. Protection From Unauthorized Disclosure

Notwithstanding any other provision of this Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, CFR, Section 431.300 et seq. and Section 14100.2, W&I Code and regulations adopted thereunder. For the purpose of this Contract, all information, records, data, and data elements collected and maintained shall be protected by the Contractor from unauthorized disclosure.

12. Contractor's Duties to Maintain Confidentiality

In addition to the requirements of Exhibit D(F), any identifiable information concerning a current or former MCP member that is obtained by the Contractor or its subcontractor[s] under the scope of work of this Contract shall, at the termination of this Contract, (1) be returned to DHS or maintained according to written procedures sent to the Contractor by DHS for this purpose; and (2) protected from all other employees of the Contractor not assigned to the scope of work under the terms of this Contract.

13. Turnover/Phaseout Requirements

The Turnover/Phaseout Periods shall occur during the same three [3] month time period. This period shall commence on the first day following the expiration of the Operations Period of the Contract. Turnover/Phaseout related activities are not billable activities.

14. Turnover Requirements

Prior to the termination or expiration of this Contract and upon request by DHS, the Contractor shall transfer to the Department, or a successor contractor, MCP members' and eligible beneficiaries' medical record information, MCP data, medical survey tools (exclusive of any Contractor proprietary tools), data analysis and evaluation reports of medical quality review studies, all appropriate Books and Records as defined in Section 4, and all data bases and files required by this

Contract. During the Turnover Period, the Contractor shall make available to DHS copies of medical records, patient files, management information system files and any related information including information maintained by any subcontractor, necessary for efficient transfer of Contractor responsibilities, as determined by DHS. Should DHS determine that other data is required for Turnover, DHS shall notify the Contractor in writing within the time constraints enumerated below. Costs of reproduction shall be borne by the State.

- .1 All data, information and documentation provided by the Contractor shall be accompanied by a letter, signed by the Contractor's representative, certifying to the accuracy and completeness of the materials supplied.
- .2 The physical transfer of data, information and documentation shall be in an orderly and efficient manner, and in full compliance with the security and confidentiality provisions of this Contract. The Contractor will transfer to DHS, in covered boxes, all required documents along with transmittal sheets indicating the contents of each box and the type[s] of document[s] contained in each box. This transfer shall be executed in accordance with the Contractor's Turnover Workplan as required in Section 17 below.

15. Phaseout Requirements

- .1 The objective of the Phaseout Period is to ensure that, at the termination of the Contract, the Contractor completes any and all of its remaining contractual obligations under the Contract.
- .2 Phaseout for this Contract shall consist of the processing, payment and necessary monetary reconciliation[s] regarding all claims for payment for subcontracted services and the submission of final reports which identify all expenditures up to and including the last month of payment made to the Contractor. The Contractor shall complete the processing and payment of claims generated during the life of the Contract or, alternatively, shall secure the prior approval of DHS to transfer such claims to DHS. Payment of those claims by DHS shall be offset from any remaining payments owed to the Contractor.

16. Objectives for Turnover/Phaseout Period

- .1 The objective of the Turnover Period is to ensure, at the termination or expiration of this Contract, the orderly transfer of all MCP data and history records; medical survey tools (exclusive of Contractor proprietary tools), analysis and evaluation reports of medical quality review studies, and any other pertinent information and documentation pertaining to Medi-Cal

MCPs, Contractors, members, and eligible beneficiaries from the Contractor to DHS. The orderly transfer is to ensure confidentiality of MCP members' or eligible beneficiaries' records and the transfer of responsibilities, work completed and work in progress of the Contractor.

17. Turnover/Phaseout Preparation

- .1 In order to prepare for Turnover/Phaseout activities, the Contractor shall submit to DHS:
 - a) A detailed description of the methodology that will be utilized by the Contractor to conduct Turnover/Phaseout activities.
 - b) A Turnover/Phaseout Work Plan.
- .2 The Contractor's methodology for conducting Turnover/Phaseout activities and the Turnover/Phaseout Work Plan shall be submitted to DHS for approval three [3] months prior to the expiration of the Operations Period of the Contract or Contract extension. Upon written approval by DHS, the Contractor shall implement the approved Turnover/Phaseout related activities upon the commencement of the Turnover/Phaseout Period, as defined in Sections 14. and 15.
- .3 DHS will review the Contractor's methodology and Turnover/Phaseout Work Plan to determine if all the Turnover/Phaseout requirements and activities are adequately and appropriately detailed and sufficiently covered, by the Contractor, prior to giving final written DHS approval to the Contractor to implement Turnover/Phaseout activities.
- .4 The objective for submitting a detailed description of the methodology that will be utilized by the Contractor, is to ensure an orderly, systematic process will be utilized for the complete review, certification, and acceptance of all Contractor's data and information provided to DHS.
- .5 The objective of the Turnover/Phaseout Work Plan is to identify requirements and activities necessary to complete the Contract expiration/termination process, transfer the current Contractor's data, information, documentation, data bases and any relevant processes to DHS in order to effect the most efficient Turnover with minimal time lost for implementation of work by the successor Contractor at full systems capacity. The Turnover/Phaseout Work Plan shall include but is not limited to the Contractor's Turnover/Phaseout activities as follows:

- a) Descriptions of the Turnover/Phaseout activities identified as major tasks and minor tasks to be performed during the Turnover/Phaseout period including but not limited to:
 - (1) A time line for the performance of all Turnover/Phaseout tasks and services.
 - (2) A time line for submission of all reports, data bases, files, and all appropriate Books and Records as defined in Section 4.
 - (3) A detailed description of the most current version of the data information files including but not limited to the data dictionary and files/records layouts which shall be transferred to DHS. Data shall be transferred in a format compatible with DHS, such as DB2 or ASCII or other file type defined by DHS.
- b) Proposed schedules and staff allocations, by classification, for all Turnover/Phaseout activities, including narrative descriptions.
- c) A detailed description of the procedures that will be utilized by the Contractor to ensure an acceptable transfer of the Contractor's records to DHS.

19. Conflict of Interest Disclosure Statement

- .1 The "Conflict of Interest Disclosure Statement" [CIDS] shall fully describe any direct or indirect interest the Contractor, any parent corporation, subsidiary, or any subcontractor (hereafter referred to as [the CONTRACTORS]), as well as employees, directors, officers or consultants of the CONTRACTORS, have in any provider of Medi-Cal services including health plans. The CIDS shall include the name, company, and position description of the CONTRACTORS' employee, director, officer or consultant about whom the disclosure is being made.
- .2 At a minimum, the CONTRACTORS' CIDS shall disclose the name and address of any and all providers of Medi-Cal services in which:
 - a) The CONTRACTORS, or any CONTRACTORS' employee, director, consultant, or officer have a direct or indirect interest of more than \$1,000.
 - b) The CONTRACTORS, or any CONTRACTORS' directors or officers, as well as any CONTRACTORS' employees or consultants

assigned to this Contract, is a director, officer, partner, trustee, employee, or holder of a management position, or is self-employed and working with any provider of Medi-Cal services.

- c) The CONTRACTORS, or any CONTRACTORS' directors or officers, as well as any CONTRACTORS' employees or consultants assigned to this Contract, have derived more than \$250 in direct or indirect income within the twelve [12] months immediately prior to the submittal of a Proposal.
 - d) The terms indirect interest or indirect income in subsections 19.1 and 19.2 refer to an interest in or income from a Medi-Cal provider which is owned or received by a spouse or dependent child of a CONTRACTORS' officer or director, as well as any CONTRACTORS' employee or consultant assigned to this contract.
- .3 The CONTRACTORS shall assure that the CONTRACTORS' directors or officers, as well as any employees or consultants assigned to this contract have no interest as described above in subsections 19.1 and 19.2 with health care providers(s).
- .4 The Contractor shall submit, for DHS review and approval, a CIDS:
- a) Two weeks after the effective date of the Contract;
 - b) An update six months after the Contract effective date;
 - c) A yearly update thereafter; and/or anytime a change occurs which affects the previously submitted and approved statement, whichever occurs sooner.

Should a change occur which results in a conflict of interest, the Contractor must submit a new CIDS, together with a "Conflict of Interest Avoidance Plan" [CIAP], to be sent to the Contract Manager for prior review and approval within ten [10] State working days of the change.

- .5 The Contractor shall establish personnel policies which prohibit activities and associations that may lead to conflicts of interest, and the Contractor shall maintain compliance with such policies during the term of the Contract. The Contractor shall provide DHS with copies of these policies, including any subsequent changes.

- .6 If DHS determines that a conflict of interest situation exists, all payments may be disallowed by DHS until the conflict is resolved.
- .7 DHS intends to avoid any real or apparent conflicts of interest on the part of the Contractor. Hence, DHS reserves the right to, in its sole discretion, determine whether any information received from any source indicates the existence of a real or apparent conflict of interest.

20. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

21. Cancellation by DHS with or without Cause

- .1 This agreement may be cancelled by DHS without cause upon 30 calendar days advance written notice to the Contractor.
- .2 DHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if DHS substantially fails to perform its responsibilities as provided herein.
- .3 The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- .4 Agreement termination or cancellation shall be effective as of the date indicated in DHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing, or payment requirements.
- .5 Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- .6 In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

DEFINITIONS

1. **Aggregate Report** means a comprehensive report that provides results of the External Accountability Set audit rates or other quality improvement studies or projects. The Aggregate Report must include, at a minimum, study methodology, limitations and caveats, plan-to-plan comparison, comparisons by plan model type, trending individual plan performance, conclusions as to the quality of care provided by the MCP, a detailed assessment of MCP strengths and weaknesses, and recommendations for further improvement by MCPs.
2. **Attachments** means exhibits and special or unique materials relating to contractual requirements attached to the Contract and/or incorporated by reference.
3. **Benchmark** means the industry measure of the best performance for a particular indicator or performance goal. Benchmarking is the process of using industry leaders and the best demonstrated levels of excellence as the unit of comparison for one's own organization, with an ongoing effort to achieve and surpass that performance.
4. **Beneficiary** means a person who has been determined eligible for the Medi-Cal program.
5. **Commercial Plan (CP)** means a non-governmental health care plan administered by a private sector Health Maintenance Organization (HMO) to provide health care services to Medi-Cal beneficiaries under DHS's Two-Plan Model.
6. **Confidential Information** means specific facts or documents identified as "Confidential" by law, regulation or contractual language.
7. **Compliance Audit** means the evaluation performed by the Contractor to assess the validity of the Plan's reporting methodologies, medical record abstraction tools and processes, and calculation of rates for designated performance measures.
8. **Consultant** means an individual or organization that demonstrates specific expertise in a recognized area of the medical or scientific research process of whom the Contractor seeks professional or technical advice or opinion.
9. **Contract** means the written agreement between the DHS and the Contractor.

10. **Contract Inception** means the effective date of the first contract between Health Services Advisory Group, Inc. and the Department, noted as May 1997.
11. **Contractor** means Health Services Advisory Group, Inc.
12. **Contract Effective Date** means the date upon which the terms of the Contract go into force. Date is specified in the Contract on the Standard Agreement.
13. **Contracting Officer** means the responsible party within DHS who has the authority to enter into a Contract with the Health Services Advisory Group, Inc.
14. **Contractor's Representative** means the Contractor's official responsible for managing the Contractor's operation in performing the Contractor's obligations under this contract.
15. **Contract Requirement/Deliverable** means any service, deliverable or other duty which the Contractor is required to provide or perform under the terms of the Contract.
16. **Corrective Actions** means specific identifiable activities undertaken to address deficiencies or problems identified by formal audits, monitoring activities, or performance evaluations.
17. **County Organized Health Systems (COHS)** means a local agency, with representation from providers, beneficiaries, local government, and other interested parties, created by a County Board of Supervisors to contract with the Medi-Cal Program for provision of health care services to all medicaid beneficiaries who are residents of said county.
18. **Department of Health Services (DHS)** means the State of California Department of Health Services, single State agency responsible for administration of Medi-Cal, Medi-Cal Managed Care, Maternal Child Health (MCH), Office of Clinical Preventative Medicine (OCPM), Children's Medical Services (CMS), California Children's Services (CCS), Genetically Handicapped Persons Program (GHPP), Child Health Disability and Prevent Program (CHDP), and other health related programs.
19. **Director** means the Director of the State of California Department of Health Services.

20. **EQRO Quality Review Program** means all activities and studies performed by the Contractor on behalf of the Department during the term of the EQRO contract as executed on May 1, 1997.
21. **Exhibits** means contract terms and conditions which are grouped together by subject and incorporated into a contract by reference or attachment.
22. **External Accountability Set** means a set of HEDIS® and Department-developed performance measures selected by the Department for evaluation of health plan performance.
23. **External Quality Review Organization (EQRO)** means a Peer Review Organization (PRO), PRO-like entity, or accrediting body that is an expert in the scientific review of the quality of health care provided to Medicaid beneficiaries in a state's Medicaid managed care plans.
24. **Fully Executed Contract** means a contract that has received all necessary signatures and approvals.
25. **Geographic Managed Care (GMC)** means the GMC Program authorized by Section 14089 et. seq., of the W&I Code.
26. **Health Plan Employer Data and Information Set (HEDIS)** means the set of standardized performance measures sponsored and maintained by the National Committee for Quality Assurance (NCQA).
27. **HEDIS Compliance Audit** means an audit process that uses specific standards and guidelines for assessing the collecting, storing, analyzing and reporting of HEDIS measures. This audit process is designed to ensure accurate HEDIS reporting.
28. **Internal Quality Improvement Projects (IQIPs)** means studies selected by each Medi-Cal Managed Care Plan to be used for their own internal quality improvement purposes. The studies include an initial report, four phases and a final report:

Initial Report: Includes information about the purpose and feasibility of the proposed project.

Phase 1: Development of the research design, methodology and project timeline.

Phase 2: Collection of baseline data.

Phase 3: Baseline data analyzed and interventions proposed.

Phase 4: Interventions implemented and remeasurement performed to identify Significant Improvement.

Final Report: Remeasurement performed to identify Sustained Improvement.

29. **Local Initiative (LI)** means a locally developed Managed Care Plan created by a County to provide health care services to Medi-Cal beneficiaries under DHS's Two-Plan Model.
30. **Managed Care** means a planned, comprehensive approach to health care that combines clinical services and administrative procedures within a coordinated system constructed to provide cost-effective and timely access to primary health care.
31. **Managed Care Plan (MCP)** means a managed care plan contracting with DHS to enroll Medi-Cal beneficiaries under the California Welfare and Institutions Code Section 14087.3 through 14499.77.
32. **Medicaid HEDIS** means the adaption of the National Committee on Quality Assurance (NCQA) *Health Plan Employer Data and Information Set* used with Medicaid managed care programs. HEDIS provides a standardized set of performance measures targeted to the needs of Medicaid beneficiaries enrolled in Managed Care Plans.
33. **Medi-Cal** means in California, the Title XIX Federal Medical Assistance Program (Medicaid) to provide Federal and State financial assistance for health and medical care of needy persons meeting program eligibility standards in California.
34. **Medical Review Criteria** means systematically developed statements that can be used to assess specific health care decisions, services, and outcomes.
35. **Medical Records** means written documentary evidence of treatments rendered to a MCP member.
36. **Member** means any eligible beneficiary who has enrolled in an MCP.
37. **Minimum Performance Level** means a minimum requirement of performance of the Contractor on each of the performance measures selected by DHS.

- 38. **National Committee for Quality Assurance (NCQA)** means a not-for-profit organization committed to assessing, reporting and improving the quality of care provided by organized health care delivery systems.
- 39. **Operations Period** means the nine (9) month period from January 1, 2002 through September 30, 2002.
- 40. **Performance Measures** means the methods or instruments utilized to estimate or monitor the extent to which the actions of a health care practitioner conform to the standard clinical practice standards/guidelines.
- 41. **Plan-Specific Report** means a comprehensive report that provides results of the External Accountability Set audit or other quality improvement studies or projects. The Plan-Specific Report must include, at a minimum, study methodology, limitations and caveats, trending individual plan performance, a detailed assessment of MCP strengths and weaknesses, conclusions as to the quality of care provided by the MCP, and recommendations for further improvement by health plans.
- 42. **Practice Standards/Guidelines** means systematically developed statements to assist practitioners and patients in decision-making concerning the appropriate medical care for specific clinical conditions. Practice standards/guidelines are developed by multidisciplinary panels of clinicians and other experts who employ scientific based evidence and expert clinical opinions to develop specific statements on patient assessment and management for specified clinical conditions. They reflect the current state of knowledge and publication on effective and appropriate medical care for the selected condition and must be updated and revised as indicated.
- 43. **Program** means any group of offices within DHS that fall organizationally under the direction of a Deputy Director whose primary purpose is to carry out a line function in support of the DHS mission.
- 44. **Proprietary** means ownership such as held under patent, trademark, or copyright. The term can include information, contract data which is unique to a company and which, in the hand of a competitor, would be detrimental to the company.
- 45. **Provider** means any individual, partnership, clinic, group, association, corporation, institution, or public agency providing health care services according to applicable standards under a Medi-Cal managed care contract to provide health care delivery services of Medi-Cal beneficiaries.

- 46. **Quality Assurance** means a formal set of activities to assure the quality of clinical and non-clinical services provided. Quality Assurance includes quality assessment and Corrective Actions taken to remedy any deficiencies identified through the Contractor's assessment process. Comprehensive Quality Assurance includes mechanisms to assess and assure the quality of both health services and administrative and support services.

- 47. **Quality Improvement (QI)** means the results of an effective quality assurance program which objectively and systematically monitors and evaluates the quality and appropriateness of care and services to members through Quality of Care studies and other health related activities.

- 48. **Quality Improvement Plan (QIP)** means a plan of systematic activities to monitor and evaluate the medical care delivered to MCP members according to the standards set forth in regulations and contract language. The MCP must have processes in place, which measure the effectiveness of care, identify problems, and implement improvement on a continuing basis.

- 49. **Quality Indicators** means measurable variables relating to a specific clinic or health services delivery area which are reviewed over a period of time to screen delivered health care and to monitor the process or outcome of care delivered in that clinical area.

- 50. **Quality of Care** means the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with the current professional knowledge.

- 51. **Scope of Work (SOW)** means work activities, actions to be performed, deliverables to be supplied, methods and approaches to be used and expected objectives and outcomes to be achieved under this contract.

- 52. **Significant Improvement** means a reduction of the performance gap, which is further defined by the reduction of at least ten percent in the number of Members that do not achieve the desired outcome. This can also be defined as demonstrating that an improvement measured is statistically significant with a p value of less than or equal to 0.10.

- 53. **Standards of Quality** means authoritative statements of (1) minimum levels of acceptable performance or results; (2) excellent levels of performance or results; or (3) the range of acceptable performance or results.

- 54. **State** means the State of California.
- 55. **Subcontract** means a written agreement, including any amendments, entered into by the Contractor with any other organization or person[s], who became the subcontractor[s], and who agree[s] to perform any administrative or service function for the Contractor specifically related to fulfilling the Contractor's obligations to the DHS under the terms of this Contract.
- 56. **Sustained Improvement** means the organization sustains the improvements in performance for at least one year after the improvement in performance is first achieved. Sustained Improvement is documented through the continued measurement of Quality Indicators for at least one year after the performance improvement project is completed.
- 57. **Term** means the starting and ending date of the Contract and/or the time allowed for the performance and completion of the Contract.
- 58. **Trend** means a pattern or apparent direction in outcomes of statistical significance.
- 59. **Turnover and Phaseout Period** means the three [3] month time period commencing the first day following completion of the operations period of the contract and ending on the date of contract termination.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and two (2) copies. The original must bear the original signature of a person authorized to bind the Contractor. The additional copies may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** 01-16385 entered into between the State of California Department of Health hereby Services and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____. If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment, will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies or products offered or used in the performance of the above referenced contract meets or exceeds the minimum percentage of recycled material, as defined in Public Contract Code Sections 12161 and 12200.

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHS or purchased with or reimbursed by contract funds)

Unless DHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHS, at DHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

Contractor's Legal Name (As on contract): Health Services Advisory Group, Inc.

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

DHS Distribution: Accounting (Original) Program CMU contract file

**CURRICULUM VITAE
FOR
LAWRENCE J. SHAPIRO, MD**

Exhibit G

POSITION WITH HSAG:

President & Chief Executive Officer

EDUCATION:

1953	BA, Stanford University
1959	MD, University of Colorado
1959 – 1960	Internship, University of Illinois Research and Educational Hospitals
1960 – 1962	Residency, University of Colorado – Pediatrics
1962 – 1963	Fellowship, University of Colorado – Gastroenterology
1963 – 1964	Residency, University of California, Los Angeles - Medical
1963 – 1964	NIH Fellowship, University of California, Los Angeles - Gastroenterology

PROFESSIONAL EXPERIENCE:

1985 - Present	HEALTH SERVICES ADVISORY GROUP, INC., (HSAG), PHOENIX, AZ
1991 - Present	President & Chief Executive Officer
1965 – 2000	PRIVATE PRACTICE
	Adult and Pediatric Gastroenterology

SPECIAL QUALIFICATIONS/ACTIVITIES:

Board Certified
Pediatrics

Board of Directors

1975 - 1982	Blue Shield Arizona, Board of Directors & Professional Committee
1978 - Present	Arizona Medical Association, Board of Directors
1982 - 1984	Executive Committee, St. Joseph's Hospital, Phoenix, AZ
1985 - 1991	American Medical Peer Review Association
1995	American Health Quality Association, Leadership Task Force
1973 - Present	Maricopa Foundation for Medical Care

Chairman

1970 - 1972	Maricopa County Medical Society Grievance Committee
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President

1976 - 1978	Maricopa Foundation for Medical Care
1981 - 1983	Northern Arizona Medical Evaluation Systems
Current	Health Services Advisory Group, Inc.

Awards

1972	Distinguished Service Medal, Maricopa County Medical Society
1978	Distinguished Service Medal, Maricopa County Medical Society

**CURRICULUM VITAE
FOR
MARY ELLEN DALTON, RN, MBA, CHCA, DIPLOMATE ABQAURP**

POSITION WITH HSAG:

**Vice President, State and Corporate Services
NCQA-Certified HEDIS® Compliance Auditor (CHCA)**

EDUCATION:

2000	Ph.D. Public Administration Currently enrolled at Arizona State University
1999	MBA, Executive Program Arizona State University Tempe, AZ
1977	Bachelor of Science, Allied Health-Specialty Nursing Colorado Women's College, Denver, CO
1970	Diploma in Nursing Helene Fuld School of Nursing, Trenton, NJ (Received full scholarship for entire nursing training)

PROFESSIONAL EXPERIENCE:

2000 - 2001	ARIZONA STATE UNIVERSITY, SCHOOL OF HEALTH ADMINISTRATION AND POLICY, TEMPE, AZ Adjunct Professor
1979 - Present	HEALTH SERVICES ADVISORY GROUP, INC. (HSAG), PHOENIX, AZ
1/99 - Present	NCQA-Certified HEDIS® Compliance Auditor Conducts thorough audits of Medicaid, Medicare and Commercial Health Plans to ensure that data collection and reporting procedures are in compliance with HEDIS® specifications and are comparable to reported rates from other Health Plans. This includes a thorough review of health plan's information systems, claims processing, membership and provider data.

1992 - Present

Vice President, State and Corporate Services
Contract Manager, External Quality Review Organization
(EQRO For Arizona, California, Nevada and Tennessee)

Responsible for securing, and maintaining the External Quality Review Organization (EQRO) contract required by HCFA and DHS for MediCal beneficiaries in Medicaid managed care plans in California. Designed and implemented focused clinical quality of care studies for the EQRO contract as well as conducting evaluation of the managed care plans internal quality of care program.

Designated as the EQRO contract manager acting as DHSS single source liaison between DHS and HSAG for all EQRO related matters.

Designated as the single administrator to make all determinations and take all actions as are appropriate to implement the EQRO contract in California.

Responsible for securing, designing, negotiating and maintaining contracts with AHCCCS to provide quality review and utilization review for fee for service members and Manage Health Care Plan members.

Responsible for management and supervision of all quality and utilization review activities for AHCCCS and other state government contracts as well as private employers.

Responsible for timely deliverance of contract deliverables to AHCCCS and other non-Medicare contracts.

1989 - 1992

Project Administrator, Research & Development

Responsible for securing, designing, budgeting and maintaining contracts involving research and development.

Negotiated contracts with HCFA and provided project management for research projects involving medical review and quality of care.

1987 - 1989

Associate Director, Professional Relations

Responsible for program oversight of all contract and professional relations activities for AHCCCS and other state contracts as well as private employers.

Assure optimal servicing and communication between HSAG and non-Medicare contractors.

- 1985 - 1987 **Professional Services Consultant**
Responsible for all professional relations, servicing and reporting requirements for the organization's private review clients/employer groups.
- 1984 - 1985 **Director, Marketing & Professional Relations**
Secure new private review employer group contracts for organization.

Service and maintain positive climate with present private review employer groups.

Responsible for contract negotiations and preparation.

Provide formal presentations to various management groups as well as provide general employee education sessions.

Responsible for problem identification and facilitating problem resolution concerning private review employer groups.
- 1979 - 1984 **NORTHERN ARIZONA MEDICAL EVALUATION SYSTEM (NAMES)/HEALTH SERVICES ADVISORY GROUP, INC. (HSAG), PHOENIX, AZ**
- 1983 - 1984 **Associate Director**
Responsible for providing direction and leadership to all managers within the organization which included review, quality assurance and data.

Implemented and developed a review program for private sector employer groups and supervised all related staff activities.
- 1980 - 1983 **Review Manager**
Responsible for managing and providing direction and support to senior review coordinator for quality assurance and utilization review activities.

Coordinated and developed methods to implement Medicare review in all Northern Arizona hospitals.

Prepared federal (Medicare) grants and proposals and directed proper completion of all required forms.

Initiated effective methods for problem solving and enhancing communication with the medical community which included hospitals, physicians and physician organizations, fiscal intermediaries and other pertinent associations.

Managed, developed and directed all quality assurance activities for the Medicare program in Northern Arizona. This involved:

Working closely with hospital quality assurance personnel to adhere to Medicare program requirements.

Meeting with physicians and developing techniques to discover areas for quality audit.

Developing methods and format to conduct quality audits at all Northern Arizona hospitals.

Providing direction to the Quality Assurance Committee to identify, address and resolve areas of deficiency from audits.

1979 - 1980

Senior Review Coordinator

Initiated first concurrent review process for Medicare program in four Northern Arizona hospitals.

Provided supervision, direction and support to review coordinators.

Effectively communicated with hospital personnel, physicians and other key organization representatives to facilitate program requirements.

1978 - 1979

COMPRECARE, INC. (HMO-IPA MODEL), DENVER, CO

Quality Assurance-Utilization Review Supervisor

Designed, organized and managed the quality assurance and utilization review program for the fastest growing HMO-IPA in the country.

Implemented all inpatient monitoring activities in hospitals in the Denver metropolitan area.

Provided supervision, direction and support to quality assurance-utilization review personnel.

Coordinated the activities of regional physician peer review group meetings.

Established and maintained liaison with hospital administrators and other key hospital staff.

1976 - 1978

Responsible for monitoring Comprecare compliance with all applicable federal, state and local standards and regulations.
DRS. ARTHUR AND BLAKEMAN, DENVER, CO

Office Manager

Performed ambulatory care duties in a pediatric office setting including triage, counseling, direct patient care and office management.

Initiated and developed a format for parent teaching which involved research, writing skills and public speaking.

1974 - 1976

**COLORADO FOUNDATION FOR MEDICAL CARE,
DENVER, DO**

PSRO Program Coordinator

Implemented and coordinated the Colorado Admissions Program in a Denver metropolitan hospital under the PSRO contract. Responsible for the daily management of quality of care monitoring and length of stay monitoring via the use of screening criteria .

Initiated referrals to appropriate resource personnel.

Developed a discharge planning committee to help facilitate better usage of intermediate and long term care facilities.

Trained and supervised PSRO staff.

1971 - 1974

DENVER GENERAL HOSPITAL, DENVER, CO

Staff Nurse and Relief Charge Nurse

Functioned as staff nurse in the newborn intensive care nursery.
Functioned as staff nurse and relief charge nurse in the pediatric intensive care unit and also on the pediatric ward.

1970 - 1971

**NEW YORK HOSPITAL-CORNELL MEDICAL CENTER
NEW YORK, NY**

Staff Nurse

Functioned as staff nurse in a research unit for pediatric endocrinology

Functioned as staff nurse on the pediatric ward.

SPECIAL QUALIFICATIONS/ACTIVITIES:

Certifications

- 11/98 Certified HEDIS® Compliance Auditor, (CHCA) National Committee For Quality Assurance (NCQA)
- 11/96 Diplomate, American Board of Utilization Review & Quality Assurance Physicians (ABQAURP)
- 3/96 Certified Professional in Utilization Review (CPUR)

Publications

"Shifting Roles", Continuing Care Magazine, February 1996, Volume 15, No. 2
Cover Story--This article is regarding case managers and quality assurance professionals adapting to major trends in managed care.

Other

Member, Board of Directors since 1982 for Health Services Advisory Group, Inc. (HSAG)
Owner, Stockholder HSAG since 1982
Member, Executive Committee for HSAG (1982-1989)
Secretary, Officer, Board of Directors for HSAG (1982-1989)
Member, Finance Committee of Board of Directors for HSAG (1992-Present)
Member, Senior Executive Management Team of HSAG (1992-Present)
Member, Expert Panel HCFA National Review Protocol Contract
Member, Insurance Committee for the Governor's Council for Spinal Head Injuries (1995-Present)
Member, Arizona Partnership for Infant Immunization (1994-Present)
Member, Executive MBA Program Advisory Panel
Member, NCQA Audit Methodology Panel
Member, Women in Healthcare - 3/01

Speaker

Comprehensive Case Management Intensive--conducted seminar in Phoenix and Indiana-April 1996
Arizona Association of Quality Assurance Professionals (Annual Meeting)
November 15, 16, 1999 - BlueCross/BlueShield Association's HEDIS® 2000 Conference, Chicago, IL